



City of Fridley, 6431 University Avenue NE, Fridley, MN 55432 763-571-3450

TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Walter T. Wysopal, City Manager
DATE: March 22, 2016
RE: H.F. 2560 (Zerwas); S.F. xxxx: PERA-P&F; Permitting Payment of Disability and Rescission of Retirement Annuity

The City of Fridley is strongly opposed to this legislation for the following reasons:

1. The parties financially impacted were caught completely off-guard as we were not made aware of alleged misdiagnosis or of the proposed bill.
2. Alternatives to legislation have not been attempted.
3. The financial hardship to the City of Fridley is estimated at \$200,000 which becomes an unfunded mandate.
4. Should the proposed legislation be adopted, it would prevent the City's due process rights and create a double-jeopardy effect.
5. This individual claim of misdiagnosis is not timely.
6. Claims of misdiagnosis are better dealt with by general legislation not through individual paths to the legislature.

This bill seeks to legislate the recalculation of a retirement benefit for one specific eligible person from a regular retirement to a duty disability benefit retirement. The bill would allow the individual to submit evidence to Public Employees Retirement Association (PERA) that at the time of retirement the individual would have been entitled to select a duty disability benefit; and that the individual was not aware of that entitlement because of a medical misdiagnosis that was later corrected. If this bill was adopted and PERA changes the retirement to duty disability, the City of Fridley would then be liable for the duty disability health insurance benefit.

The City does not dispute that the individual was injured in the line of duty. In addition to the reasons listed above, the City objects further to this bill with the following information for your consideration:

- 1) Mr. Farber or the author of the bill did not inform the City of Fridley regarding this proposed legislation nor the involved parties, such as PERA, the League of Minnesota Cities staff, LMC Policy Committee, or the Pensions Commission Staff regarding the proposed legislation.
- 2) Mr. Farber did not seek injunctive relief and exercise his member right by making a direct application with PERA for a review of his disability determination.

The standard practice, prior to introducing legislation, would be for an individual to apply to PERA to request a change in their retirement status. If PERA denied their change

request, they would have the ability to appeal to the Office of Administrative Hearings (OAH). If the OAH ruled against them, they could then take possible legislative action at that time. From our understanding, in this case the individual took it straight to legislative action.

It is our understanding that Mr. Farber can still exercise this option without going through legislation.

- 3) The City believes Mr. Farber was not disabled at the time of his separation from the City on 12/31/2008 and was able to perform the full duties of his position as a police officer.
- 4) Mr. Farber voluntarily resigned under a standard retirement and went onto work in other full-time employment following his position with the City of Fridley.
- 5) It is difficult to prove or disprove an individual was aware or was not aware of their entitlement to receive a duty disability benefit, however, the City believes that the police and fire employees are very cognizant of their PERA benefits if injured in the line of duty.
- 6) The City disputes the basis for Mr. Farber's claim in which he refers to as "a medical misdiagnosis." Arguing this case before a pension hearing and discussing complicated disability determinations would need to consider private medical information, pension rules, workers' compensation law, and settlement agreements. It would likely involve lengthy testimony and added legal representation costs to bring in experts to testify from physicians, qualified rehabilitation consultants, City staff, PERA and League staff, as well as workers' compensation claims examiners.
- 7) If this bill was adopted, or any variation of this bill, it could pose a hardship for the City of Fridley to provide the health insurance benefit under the rules of chapter M.S. 299A.465, which requires an employer pay for health coverage for those police and fire employees determined to have a duty disability injury.
- 8) This likely would require that the City reimburse Mr. Farber retroactively, even though Mr. Farber was provided insurance coverage through another employer.

The City estimates the significant financial exposure to be over \$200,000 to provide retroactive reimbursement for health coverage back to 2008 up until the age of 65. That financial hardship would be further complicated due to the City of Fridley's Charter restriction which "shall not exceed in dollars, a tax levy that is greater than the prior year tax levy increased by inflationary index, or 5%, whichever is less." Because of that restriction, the City is looking at a zero percent increase for 2017.


- 9) While the state allows for some reimbursement of the benefit for employers, it requires an annual claims process and does not have a provision to provide for retroactive payments, in essence, requiring the City to cover 100% of the costs retroactively back to 2008.

10) As a member city of the League of Minnesota Cities (LMC), the City believes the LMC has struggled with MS 299A.465 and has fought to limit its use to real duty disability due to the potential for significant liability exposure. The LMC has worked hard to define the threshold for the health insurance benefit and have continued their fight that it be for hazardous/risky factors (such as a physical altercation during an arrest or shooting). The legislature did provide some funding to help offset the cost to the cities, state, and counties, but it does not fully cover the cost of the benefits and does not provide for retroactive reimbursements.

11) If adopted, the City believes this bill could set a precedent and invite other cases to come forward, exposing public employers and taxpayers to additional added costs.

If this legislation is considered, the City would request that at a minimum, the state set aside an appropriation to be created to help fund the retroactive health insurance benefit for this individual and for the future exposure.

Sincerely,
CITY OF FRIDLEY

A handwritten signature in black ink, appearing to read "Walter T. Wysopal". The signature is fluid and cursive.

Walter T. Wysopal,
City Manager

Cc: Fridley City Council